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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/474,043	12/28/1999	OOMMAN PAINUMOOTIL THOMAS		1780

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EXAMINER

WATKINS III, WILLIAM P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 03/03/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-15

Office Action Summary	Application No. 09/474,043	Applicant(s) THOMAS ET AL.	
	Examiner William P. Watkins III	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 19 December 2002 has been entered.

2. The examiner notes that claims 33-64 on the clean copy of the claims does not correspond to 65-96 of the marked up copy of the claims. Claims 33-64 of the clean copy are pending.

3. Claims 57-64 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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Claims 57-64 have not been amended to reflect the polystyrene homopolymer language argued by applicant. The examiner accepts applicant's arguments that the Krayton polymers used in the examples are substantially free of polystyrene homopolymer based on the evidence and argument supplied by applicant.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 33-45, 52-57, and 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry (U.S. 4,414,970) in view of Palomo et al. (U.S. 5,938,874) and Wang (U.S. 5,939,464).

Berry teaches the use of an elastomeric film on a fabric substrate in a personal care article with one embodiment of the film being permeable and microporous (col. 2, lines 40-55). Palomo et al. teaches making breathable microporous films, which

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may be made of thermoplastic elastomers, by the use of foaming agents (abstract, col. 5, lines 50-65). Wang teaches foaming thermoplastic elastomers made of styrene block copolymers that have high levels of elongation up to 500% (abstract, col. 1, lines 30-65). The instant invention claims the use of a microporous permeable film on a fabric substrate where the film has been made by use of a blowing agent and may comprise styrenic tri-block polymers. It would have been obvious to one of ordinary skill in the art to have made the porous elastomeric films of Berry using blowing agents and styrenic block polymers because of the teachings of Palomo et al. and Wang that a blowing agent and these materials can be used to produce breathable porous elastomeric films. Berry also teaches the use of a nonwoven fabric in combination with the permeable film. A spunbonded nonwoven is instantly claimed. Spunbonding is a common method of forming nonwoven materials and would have been obvious to use by one of ordinary skill in the art. The processes of foaming of Wang and Palomo et al. use the same blowing agents and conditions as the process of the instant disclosure and are thus presumed to have a similar amount of open and closed cells as the instantly claimed product.

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6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

7. Claims 33-45, 53 and 61 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang (U.S. 5,939,464).

See the abstract. The reference teaches elastomeric films made with blowing agents.

8. Claims 58-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry in view of Palomo et al. and Wang as applied to claims 33-45, 52-57 and 61-64 above, and further in view of Shah et al. (U.S. 5,786,412).

Berry in view of Palomo et al. and Wang teach an elastomeric microporous film on a substrate as noted above. Shah et al. teaches the use of polyurethanes to make elastomeric films as well as styrenic triblock polymers. The instant invention claims a polyurethane based elastomeric foam. It

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would have been obvious to one of ordinary skill in the art to substitute polyurethane for the styrenic components of Berry in view of Palomo et al. and Wang because of the teachings of Shah et al. that polyurethane makes a layer similar to that of styrene based elastomers.

9. Claims 46-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry in view of Palomo et al. and Wang as applied to claims 33-45, 52-57 and 61-64 above, and further in view of Cheong (U.S. 5,571,529).

Cheong teaches the use of various topical medicinal substances in a foam layer that is in contact with skin (col. 3, lines 50-65). The instant invention claims the storage of and release of various active agents in a microporous elastomeric layer. It would have been obvious to one of ordinary skill in the art to have used a topical medicine or other active substance in the microporous bandage layer of Berry in view of Palomo et al. and Wang in order to deliver an active substance to a user's skin layer because of the teachings of Cheong.

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10. Applicant's arguments filed 19 December 2002 have been fully considered but they are moot in view of the new grounds of rejection.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 703-308-2420. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

WW/ww

February 23, 2003



**WILLIAM P. WATKINS III
PRIMARY EXAMINER**